

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

10,472

FILE: B-193805

DATE: June 15, 1979

MATTER OF: *[Applicability of]* H. J. Otway - Fly America Act, ~~application to Govern-~~  
ment invitees]

## DIGEST:

Requirement to use U.S. Flag air carriers unless those carriers are "unavailable" applies to Government invitees even though traveler is unaware of statutory provisions and inviting agency fails to make proper travel arrangements. 49 U.S.C. 1517.

This is in response to a request from the Director, Division of Accounting, Office of the Controller, Nuclear Regulatory Commission (NRC), for an advance decision concerning a travel voucher submitted by H. J. Otway, an invitational traveler for the NRC.

The Division Director, who is an authorized certifying officer, forwarded to this Office a copy of the voucher in question. Ordinarily the General Accounting Office will not render an advance decision unless the request is accompanied by an original voucher, properly certified and approved. 22 Comp. Gen. 588 (1943). Where the record shows, however, that the certifying or disbursing officer does have a voucher before him, the question presented may be decided in order to expedite matters. B-193434, November 30, 1978; B-178441, June 18, 1973.

Mr. Otway, an American member of the International Atomic Energy Agency in Austria was invited to confer in Washington by the NRC at the agency's expense for the period March 25-30, 1978. He was not instructed as to how he should arrange air transportation, nor were the administrative facilities of the NRC, which were available, used to arrange travel for Mr. Otway. He made his own travel arrangements and used a foreign air carrier for the segment of his trip from Vienna through Amsterdam to New York. A U.S. air carrier was available for the trip to New York. Upon his arrival in Washington, he was informed of the requirement to use U.S. air carriers, and changed his return trip which included a personal side trip to Albuquerque, New Mexico, so that he returned to Vienna by a route making the greatest practical use of U.S. air carriers.

Mr. Otway was unaware of the requirement to use U.S. air carriers. Because Mr. Otway is not an employee of NRC, the agency feels that he should not be penalized for its failure to give appropriate instructions and to make proper arrangements for the travel.

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The requirement for use of certificated U.S. air carriers in international travel is imposed by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, Public Law 93-623, January 3, 1975, 49 U.S.C. § 1517 (1976), which provides that:

"\* \* \* The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment of such personnel or cargo transportation on an air carrier not holding a certificate under section 401 of this Act in the absence of satisfactory proof of the necessity therefore. \* \* \*"

The law does not differentiate between Government employees and Government invitees. All Government-financed air travel must be on U.S. air carriers unless those carriers are "unavailable". See B-188968, August 8, 1977. There is no provision to relieve a traveler of the penalty for using a foreign flag carrier because of the agency's failure to make appropriate travel plans. The requirement for use of certificated service is mandated by statute and may not be waived. B-186007, November 15, 1976. Therefore, because transportation by certificated U.S. air carriers was available between Vienna and Washington, Mr. Otway may not be allowed the amount of money improperly diverted from U.S. air carriers.

NRC has adopted the mileage proration formula described in 56 Comp. Gen. 209 (1977) for use in determining the amount of the traveler's financial liability. Applying the formula to Mr. Otway's case, his liability for use of a noncertificated air carrier from Vienna to New York is \$245.08.

However, Mr. Otway's travel voucher includes an inapplicable round trip air fare of \$722; the correct price for the authorized round trip ticket if purchased in Vienna, Austria, is \$969.60, or \$247.60 more than the amount claimed. Since the penalty is \$245.08, Mr. Otway may be allowed \$2.52 in addition to the amount claimed on his voucher, if otherwise correct. See 58 Comp. Gen. 298 (1978).

Deputy

  
Comptroller General  
of the United States